

No. 9(I)-81/6-Lab./14943.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Janardhan Ohja, son of Shri Munishwar Ojha, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

Appearances—

- (1) Shri Janardhan Ojha along with Shri Chander Singh.
- (2) Shri U.C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 29th April, 1981, under section 10A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette* (Extraordinary),—vide No. ID/RTK/67/81/27600, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed copies of documents in support of their contentions whereas the representative of the workmen filed collective documents on behalf of the union without being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent. :—

- (1) Whether the workman was unauthorisedly absent exceeding ten days from duty ?
- (2) Whether the action taken by the management tantamounts to retrenchment, if so, to what relief he is entitled to?

The parties produced their evidences. The workman examined himself as witness. Shri Janardhan Ojha stated that he was on hunger-strike during the period 9th March to 3rd April, 1981, in Nehru Palace (H.O. of the Company) and did not receive any letter of the management regarding his absence during this period. He further stated that he reported for duty on 19th April, 1981, after the hunger-strike was lifted on 3rd April, 1981. But he was stopped at the gate by the Watchman who told that his name has been struck off. He further stated that Sarvshri Mathur and Pant met him in his tent while he was on hunger-strike during this period. In his cross-examination, he affirmed that he had made mention of hunger-strike and not dharna in his claims statement as well as rejoinder. He stated that no Doctor visited him in the first 5 days and thereafter he had no such knowledge because his condition had deteriorated. He could not tell how much weight he lost during his hunger-strike. Nor he could tell the date when Sarvshri Bhargava, Mathur and Pant visited him in his tent and assured him that the demands would be met. He stated that he had no knowledge that anybody offered him juice on 3rd April, 1981, nor could he tell that when he was taken away and who carried him and by which mode of transport to his village. He, however, regained his consciousness after 3-4 days. He could not tell the name of the Chowkidar who refused him on 19th April, 1981. He demanded the Receipt of Registered A/D letter dated 2nd April, 1981, but could read the contents "जेने से इनकार वापस" written in Hindi on the returned envelope. He stated that the postman did not meet him. He admitted that he did not write to the management about his proceeding on hunger-strike nor the General Secretary gave his name.

While the management examined Sarvshri U. C. Pant (Dy. Personnel Manager), Shri R. K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman and M/s Rajpal and Niranjan Singh, Watchmen, as witnesses whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which could compel the management to invoke clause 15 of the Standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of justified demands and the hunger-strike was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances, that he had left the services or had any such intentions. In this case he relied on the Rulings in case of :—

- (1) G.T.-Lad. *versus* Chemicals & Fibres India Ltd., 79 LIC P. No. 290
- (2) Buckingham & Co. *versus* Venkatiah—63—LLJ No. 63.

He also questioned the bona fide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management and said that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz., *State Bank of India versus Subramaniam*, *M/s Hindsutan Steel Ltd. versus Presiding Officer, Labour Court* etc. He accordingly pleaded that the management while observing the conditions precedent to retrenchment committed illegality thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation, it has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained them the legal as well as the justified position,—vide their letters Exb. W-7 and W-8 and their standing has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—vide endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out that there is no truth in the statement of Servshri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981, which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and do not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger-strike/dharna which was resorted to by negligible minority of workers out of 750 workers employed and added that the factum of recall notices issued by the management have been admitted by the Union,—vide letter No. Exb. W. 5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuing or running industry as held by the bench of Five Judges of the Supreme Court in a case *"Barsi Light Railway Co. Ltd. versus K.N. Jogalekar in 1953"* and still holds good being the judgement of a larger bench. He further viewed that the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case :—

(1) D.C.M. versus Shambunath Mukherjee.

(2) State Bank of India versus Subramaniam and others.

He pointed out that the Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta versus Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment—1980—LLJ-336 (Bom.). He accordingly pleaded that the 'surplusage' for retrenchment is implicit in the scheme of Industrial Dispute Act, and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

¶ I have applied my mind to the evidence adduced by the parties as well as arguments advanced to support of their contentions. My findings issue-wise are as under :—

Issue No. 1.—From the facts and evidences it is clear that a union did raise a demand notice dated 6th January, 1981. There was some unrest amongst some workers. It has also been proved that the demands raised by the union were not considered fit for action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978, under section 12(3) of the Industrial Disputes Act, 1947, as pointed out by the Labour Department, Haryana, and thus rejected,—vide endorsement No. 38707, dated 21st August, 1981. It has also been admitted that the workmen resorted to hunger-strike without any intimation to the management and the factum of actual hunger-strike has not been proved with any medical report when the hunger-strike lasted for 24 days. Besides it has not been stated anywhere that the workman got his leave sanctioned for the period from 4th April to 18th April, 1981, even though the hunger-strike was ended on 3rd April, 1981. Nor there is any medical evidence made available on this account. The factum of having reported for duty on 19th April, 1981, has also not been proved in view of the statement of Rajpal, Watchman, and 19th April, 1981, being Sunday, the weekly rest day of the factory.

Besides, it is on record and confronted to the workmen that the management sent him letter dated 11th March, 1981 and 14th March, 1981 (recall notices) under UPC and Registered A/D letter dated 2nd April, 1981, which was returned by the Postal Authorities with remarks "लेने से इनकार बायस" and proved. A careful perusal of the statement as well as the exhibits lead to the conclusion that the workmen did have some knowledge about the recall notices issued by the management. The workman has also admitted that he did not write to the management about his resumption of his duties after refusal by the management on 19th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 19th April, 1981, which excess 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of recall notices issued to him by the management and deliberately ignored by him. Nor the plea of *mala fide* or victimisation is forceful because the workman himself to be blamed for the disregard of the standing orders and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for taking him back on duty or explaining the reasons for absence. Further I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (00) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of the clause 15 of the Standing Order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order.

Discontinuation of Service.

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 & 12(b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absence unless he explains his absence satisfactorily to the Management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 (fifteen) days wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25 (F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated, the 22nd October, 1981.

J. D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Labour and Employment Department under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,
Sole Arbitrator.

No. 9 (I)-81/6 Lab-14944.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Ram Chander, son of Shri Gaya Prasad workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri Sonapat :—

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR RETIRED DY. LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI-110027

SHRI RAM CHANDER, SON OF SHRI GAYA PRASAD (WORKMAN)

versus

THE MANAGEMENT OF M/S HINDUSATN EVEREST TOOLS LTD., JATHERI, SONEPAT
Appearances :—

1. Shri Ram Chander along with Shri Chander Singh.
2. Shri U. C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 29th April, 1981 under section 10A (3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. ID/RTK/67/81/26896, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents in support of their contention in this case whereas the representative of the workmen filed collective documents on behalf of the union not being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent :—

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty ?
- (2) Whether the action taken by the management tantamounts to retrenchment? If so, to what relief he is entitled to?

The parties produced their evidences. The workman examined himself as a witness. Shri Ram Chander deposed that he being the General Secretary of the Union resorted to Dharna from 9th March to 3rd April, 1981, which was within the knowledge of the management and the information to start dharna was given firstly on 25th February, 1981, and subsequently on 4th March, 1981 Exhibit W-2 and W-3 under his signature. He added that letter, dated 17th March, 1981 was address to the management intimating the address of correspondence in regard to the workers (eleven in all) sitting on dharna. He identified the photograph of the hunger strikers Exb. W-1 and added that there was a talk with the Labour Minister on 3rd April, 1981 in Haryana Bhawan, New Delhi, who fixed 7th April, 1981 for discuss on with the Joint Labour Commissioner and the Labour Minister got a telephonic message delivered to the Factory Manager on 3rd April, 1981 that the workers would come for duty on 4th April, 1981. A written order was also given by the Joint Labour Commissioner, —vide his letter, dated 3rd April, 1981 Exhibit W-4 and the Stenographer of the Joint Labour Commissioner came to Nehru Place with the letter, i.e., Exhibit W-4 to get the dharna/hunger-strike lifted. He further added that he went for duty on 4th April, 1981 but the Time Keeper and the Security guard informed that his entry has been banned though he remained there till 12.00 noon. He stated that the Company has got the certified standing order, but the same have not been shown though he demanded from Shri Pant. Nor he had seen the standing order displayed on the notice board. In his cross-examination he admitted that he did not intimate the management any change in his address but the address was given on the identity card where he used to get letters. He admitted that he did receive the appointment letter but could not recall if there was mention of rules and regulations of the Company in the said appointment letter.

However, he recognised his signature on the application form, dated 27th February, 1978 and acceptance of the standing orders and rule of the Company. He, however, denied to have seen the standing order displayed on the notice-board though notices regarding leave and shift changes are displayed on the notice-board. He admitted that arbitration agreement executed between him and the management and denied to have received any letter from the management prior to 17th March, 1981. He did come to know about the receipt of some letters by the workers whose names did not remember. He, however, denied the knowledge of letters dated 11th March, 1981 and 14th March, 1981 sent to him under U.P.C. by the management nor he received Registered A/D letter, dated 6th April, 1981. He, however, admitted the correctness of the contents written in Hindi, "सन से इन्कार बापिस" by the postman on the returned envelope. He stated that there were about 20—25 workers when he reported for duty at the date on 4th April, 1981, but did not know the name of the Chowkidar. He told that he met S/shri Mathur and Shri Pant on 15th March, 1981 and was not on dharna during the meeting period. He admitted that it was his duty to write to the management for taking him back on duty individually, but he did not write. He also showed his ignorance under what circumstances the retrenchment compensation is payable to a worker.

While the management examined S/Shri U.C. Pant, Deputy Manager (Personnel), Shri R.K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman and M/s. Rajpal and Niranjan Singh, Watchmen, as witnesses, whose recorded statements are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which could compel the management to invoke clause 15 of the Standing Orders. He viewed that the workmen were on peaceful agitation following the Gandhian principles for acceptance of their justified demands and the dharna/hunger-strike was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances, that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :—

- (1) G.T. Lad—versus—Chemical and Fibres India Ltd.,—79—L.I.C.
- (2) Buckingham Co.—versus—Venkattiah—63—LLJ N. No. 638.

He also questioned the bonafide of the management in acting harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management and contended that the termination tantamounted to retrenchment in the light of recent pronouncements of the Supreme Court viz. State Bank of India *versus* Subramaniam and Hindustan Steel Ltd *versus* Presiding Officer, Labour Court, etc. He accordingly pleaded that the management while not observing the conditions precedent to retrenchment committed illegality thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence requesting for being taken on duty. He contended that there has been no corroboration that the workman was on dharna excepting his lone statement. The number of workman on dharna, the period of dharna, etc. have different versions and thus cannot be accepted that a group of workers i. e., 31 or so are constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/ stern attitude about the demand notice, dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—vide their letters dated Exb. W-7 and W-8 both dated 15th March, 1981 and 31st March, 1981 and their standing has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—vide endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He pleaded that the standing orders have legal force and do not get suspended during any agitation. He viewed that every absentee cannot be presumed by the management on hunger, strike/dharna which was alleged to have resorted to by a negligible minority of the workers out of 750 workers employed and added that the factum of recall notices issued by the management have been admitted by the union,—vide letter Exhibit W-5.

As regards issue No. 2, he argued that "retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuing or running industry as held by the Bench of Five Judges of Supreme Court in a case "Barsi Light Railway Co. Ltd.,—*versus* K. N. Jogalekar in 1953 and still holds good being the judgement of a larger bench and the following cases as pointed out by the opposite counsel are distinguishable because the acts are materially different in the present case.

- (1) D.C.M. *versus* Shambunath Mukherjee.
- (2) State Bank of India *versus* Subramaniam and others.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LLJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment is implicit in the scheme of industrial disputes act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidences adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under :—

From the facts and evidence it is clear that there was some unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements, dated 3rd February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—vide its letter No. 38707, dated 21st August, 1981.

The analysis of the full facts revealed that the factum of remaining on dharna continuously during the period has not been proved and cannot be considered substantiated without any corroboration in this behalf. There appears to be no truth in the version of the workman that the P.A. of the Joint Labour Commissioner came on the spot to get the dharna/hunger-strike lifted in view of the reasons for lifting the dharna/hunger, strike mentioned in Exb. W-6. Thus the statement appears to be doubtful and questionable. The workman admission about the receipt of recall notices by some workers which can rightly be inferred that such recall notices issued to him were also within his knowledge.

The factum of receipt of letters by some workers was admitted by him which establishes that issue of such notices was within his knowledge. Besides the management did send registered A/D letter to him which was returned by the Postal Authorities with remarks "लेख से इनकार प्राप्त". The workman has also admitted that he did not write to the management his resumption of his duties after refusal by the management on 4th April, 1981. This all goes to establish that the workman remained absent unauthorisidely from 9th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workman's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evidence

from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of *mala fide* or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing orders and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provisions take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the standing order is justified and in order as the workman remained absent exceeding 30 days from duty unauthorisidely. Issue No. 1 is decided in favour of the management.

As regards issue No. 2 the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in action 2(oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold, the termination as a result of the act of employee. In this case the terminology of clause No. 15 of the standing order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order—Discontinuation, of service :

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absencenless he explains his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of enquiry and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25 (F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undischursed with the management.

J. D. MEHTA

The 22nd November, 1981.

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour, and Employment Department, under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publishing in the *Haryana Government Gazette*.

J. D. MEHTA,

Sole Arbitrator.

No. 9(1)-81/6Lab/14945.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration Award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) sole Arbitrator in respect of the dispute between Shri Jagbir Singh, son of Shri Mansa Ram, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat :—

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E, 137, TAGORE GARDEN, NEW DELHI

Shri Jagbir Singh son of Shri Mansa Ram (workman)

versus

The Management of M/s Hindustan Everest Tools Ltd., Jatheri, District Sonapat (Haryana)

Appearances :—

1. Shri Jagbir Singh along with Shri Chander Singh.
2. Shri U.C. Pant along with Shri D.N. Gupta

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement, dated 29th April, 1981 under section 10(A) (3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. JD/RTK/67/81/26721, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration.

- (1) Whether the action taken by the management was justified and if not, to what relief the workmen is entitled to.

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filled their statement of claims the written statement as well as rejoinder. The management filed documents (copies) in support of their contentions, whereas the representative of the workmen filed collective documents on behalf of the union being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent.

1. Whether the workmen was unauthorisedly absent exceeding ten day from duty.
2. Whether the action taken by the management tantamounts to retrenchment, if so, to what relief he is entitled to.

The parties produced their evidences. The workman examined himself as witness. Shri Jagbir Singh deposed that he resorted to hunger strike on 9th March 1981 and remained as such till 3rd April, 1981 in support of the demands raised by the union. He further stated that he went on duty on 19th April, 1981 after the hunger strike was lifted on 3rd April, 1981, but was refused the entry at the gate. He added that Shri Jagnardhan Ojha was also on hunger strike with him and he remained at the gate of the factory till 12.00 noon. In his cross-examination, he told that he lost his consciousness after 5 days of the hunger strike and did not know how the hunger strike was called off. Nor he knew when he left Nehru place as he regained consciousness 4/5 days after reaching his village. He told that he did not know the name of the Chowkidar disallowed his entry on 19th April 1981. He admitted that he did not given in writing to the Management to take him back on duty on 'he refusal by the watchman as he was illiterate'. He could neither recognise S/ Shri Bhargave, Shri Mathur and Shri Pant nor remember the date when they met him during this hunger strike. He denied to have received any letter from the management and he could not read the contents on the returned envelope dated 2nd April, 1981.

While the management examined S/ Shri U.C. Pant, Dy. Manager (Personnel), Shri R.K. Dixit (Personnel Officer) Shri Hira Singh, Head and M/s Rajpal and Niranjana Singh, Watchman, as witnesses, whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workmen was on peaceful agitation following the Gandhian principles for acceptance of justified demands and the hunger strike was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances, that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :-

- (1) G.T. Lad—*versus* Chemicals and Fibres India Ltd. 79—LIC P. No. 290.
- (2) Buckingham & Co *versus* Venkataiah—63—LLJ P. No. 638.

He also questioned the bona fide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management and said the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. *State Bank of India versus Subramaniam*, *M/s Hindustan Steel Ltd. versus Presiding Officer, Labour Court*, etc. He accordingly pleaded that the management while not observing the conditions precedent to retrenchment committed illegality thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained them the legal as well as the justified position, - *vide* their letters dated Ex. b.w. 7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice, - *vide* endorsement No. 38707, dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out that there is no truth in the statement of S/Shri Jagbir Singh and Jagnardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the

statement but Shri Rajpal, Watchman, who was on force and do not get suspended during any agitation. Nor every dharna which is alleged to have been resorted to by a negligible minority of 31 workers out of 750 workers employed and added that tactum of recall notices issued by the management have been admitted by the Union, —vide letter No. Ex. b-w-5.

As regards issue No. 2, he argued that "Retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuing or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd. versus K. N. Hegdekar" in 1951 and still holds good being the judgement of a large bench. He further viewed that the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

1. DCM versus Shambunath Mukherjee.
2. State Bank of India versus Subramaniam.

He pointed out that Division bench of Bombay High Court have held in case of Kamlesh Kumari Bajnikant Mehta versus Central Government Industrial Tribunal. No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LIJ 336 (Bombay). He accordingly pleaded that the "Surplusage" for retrenchment in implicit in the scheme of Industrial Dispute Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced to support of their contentions. My findings issuewise are as under :—

1. From the facts and evidences, it is clear that a Union did raise a demand notice dated 6th January, 1981. There was some unrest among some workers. It has also been proved that the demands raised by the Union were not considered fit for action in view of the subsisting settlement, dated 7th February, 1977 and 12th October, 1978 under section 12 (3) of the Industrial Disputes Act, 1947 as pointed out by the Labour Department, Haryana and thus rejected, —vide endorsement No. 38707, dated 21st August, 1981. It has also been admitted that the workmen resorted to hunger strike without any intimation to the management and the factum of actual hunger strike has not been proved with any medical report when the hunger strike lasted for about 24 days. Besides it has not been stated anywhere that the workmen got his leave sanctioned for the period from 4th April to 18th April, 1981 though hunger strike was ended on 3rd April, 1981. Nor there is any medical evidence made available on this account. The factum of having reported for duty on 19th April has also not been proved in view of the statement of Bajpal, Watchman and 19th April, 1981 being Sunday, the weekly rest day of the factory.

Besides it is on record and confronted to the workmen that the management sent him letter, dated 11th March, 1981 and 14th March, 1981 (Recall notices) under UPC and Registered A.D. letters of 2nd April, 1981 which was returned by the Postal Authorities with remarks "लेने से इनकार बापत" (Refused). A careful perusal of the statement as well as the Exhibits lead to the conclusion that the workmen did have some knowledge about the recall notices issued by the management. The workman has also admitted that he did not write to the management about his resumption of his duties after refusal by the management on 19th April, 1981. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 19th April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of recall notices issued to him by the management and deliberately ignored by him. Nor the plea malafide of victimisation is forceful because the workman himself to be blamed for the disregard of the standing order and not malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for taking him back on duty, explaining the reasons of absence. Further, I am inclined to accept the argument of the Management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the standing order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold,

the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the certified standing order—discontinuation of service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall loose lien on his on appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 (fifteen) days wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F) (B) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated the 22nd April, 1981.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Government of Haryana, Labour and Employment Department under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,

Sole Arbitrator.

No. 9(I)-81/6-Lab./14946.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Khem Chand, son of Shri Sobha Ram, workman and the management of M/s. Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J. D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER,
HARYANA, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

SHRI KHEM CHAND, SON OF SHRI SOBHA RAM

—Workman

versus

THE MANAGEMENT OF M/S. HINDUSTAN EVERST TOOLS LTD., JATHERI, SONEPAT

Appearances.—

1. Shri Khem Chand, son of Shri Sobha Ram alongwith Shri Chander Singh.
2. Shri U. C. Pant alongwith Shri D. N. Gupta.

ARBITRATION AWARD

The parties named above appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 29th April, 1981 under section 10A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (Extraordinary),—vide No. ID/RTK/67/81/26770, dated the 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents in support of their contentions whereas the representatives of the workmen filed collective documents on behalf of the union not being written by any individual workman. The following issues were framed on the basis of their pleadings with their consent.

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty ?
- (2) Whether the action taken by the management tantamounts to retrenchment ? If so, to what relief is he entitled ?

The parties produced their evidences. The workman examined himself as witness. Shri Khem Chand stated that he resorted to dharna on 15th March and 16th March, 1981 (though on leave) and continued to sit till 3rd April, 1981 at Nehru Place (H. O. of the company) in sympathy with the 2 hunger strikers and in support of the demands raised by the union. He said that outside leaders also came on the spot to meet the hunger strikers and the dharna was lifted on 3rd April, 1981 on the intervention of PA of Junior Labour Commissioner. He further stated that he went to the factory on 4th April, 1981 and was stopped by the chowkidar at the gate, who said that these are the orders of Mr. Pant and he did not receive any letter during the period of Dharna. He denied the knowledge about the rules and regulations, standing orders of the Company as he was not literate and did not see the same displayed on the notice-board. He added that he approached the Deputy Labour Commissioner, Sonapat after 4th April, 1981 who called a meeting. The management representative participated and expressed his willingness to take back 4-5 workers on duty presently and would be decided about the remaining workers subsequently. He added that the workers insisted going for duty together and not in part. He further added that there were several meetings by the various authorities but without any result. However, he could not tell the exact date of meetings. He added that he did not give individual demand notice nor he received retrenchment compensation from the management.

In his cross-examination, he admitted that he got leave for 15th and 16th March and subsequently stayed on dharna on 17th March but he did not apply for the leave as other workers were also on dharna. He admitted that no worker can be absent from duty unauthorisedly. He told that there were about 40 workers on dharna and some workers were used to come and go. He admitted that he did not remember the date when he visited the office of the Deputy Labour Commissioner, Sonapat and also the result of the joint meeting. He also admitted that there is leave application form and it is filled in when the leave is required. He denied to have received letter dated 19th March, and 24th March, 1981 sent by the management under UPC and admitted that his postal address as correct. Similarly he did not receive the Registered A/D letter sent on 2nd April, 1981 by the management and also did not remember if he refused to receive letter sent to him on 10th April, 1981. He told that he met the Head Watchman who was on duty on 4th April, 1981 and refused his entry. He, however, admitted, that he never made any request in writing to the management to take him back on duty.

While the management examined Shri U.C. Pant, Deputy Manager (Personnel), Shri K. K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman and M/s. Rajpal and Niranjan Singh, Watchmen, as witnesses, whose recorded statements are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demands and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances, that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of

- (1) *G. T. Lad versus Chemical and Fibres India Ltd.* 79 LIC P. No. 290.
- (2) *Buckingham Co. versus Venkatiah* 63 LLJ P. No. 638

He also questioned the bonafide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court *vide*, *State Bank of India versus Subramaniam* and *Hindustan Steel Ltd. versus Presiding Officer Labour Court* etc. He accordingly pleaded that the management while not observing the conditions precedent to retrenchment committed illegality thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on dharna excepting his lone statement. The number of workmen on dharna period of dharna etc. have different versions and thus cannot be accepted that a group of workers, i.e., 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position. *vide* their letters, dated Exh. W-7 and E-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand

notice,—*vide* endorsement No. 38707, dated 21st August, 1981.. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the falacious statements that all absentees went to factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of Sarvshri Hira Singh, Head Watchman, and Rajpal and Niranjana Singh, Watchmen. He also pointed that there is no truth if the statement of Sarvshri Jogbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement of Mr. Rajpal, Watchman who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was to him resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that the factum of recall notices issued by the management have been admitted by the union,—*vide* letter, Exb. W-5.

As regards issue No. 2, he argued that 'retrenchment' would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of Supreme Court in a case "Barsi Light Railway Co. Ltd. *versus* K. N. Jogalekar — in 53 and still holds good being the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

(1) B.C.M. *versus* Shambunath Mukherjee.

(2) State Bank of India *versus* Subramaniam and others.

He pointed out that a Division bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment 1980 LLJ 338 (Bombay). He accordingly pleaded that the 'surplus age' of retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issuewise are as under :—

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by their union. It is also proved that the demands raised by the Union were not considered fit for any action in view of the subsisting settlements, dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected,—*vide* its letter No. 38707, dated 21st August, 1981. The analysis of the full facts revealed that the factum of remaining on dharna continuously during the period has not been proved and cannot be considered substantiated without any corroboration in this behalf. There appears to be no truth in the version of the workman that the PA of the Jt. Labour Commissioner came on the spot to get the dharna/hunger strike lifted in view of the reason for lifting the dharna/hunger strike mentioned in Exb. W-6. Thus the statement appears to be doubtful and questionable.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union—*vide* their letter dated the 17th March 1981 Exhibit W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with the remarks "लेने से इंकार वापस". The workman has also admitted that he did not write to the management about his resumption of his duties after refusal by the management on 4th April, 1981. The factum of having reported on the 4th April, has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 17th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the Standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evidence from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of mala fide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing orders and non-alice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further I am inclined to accept the arguments of the management counsel that the standing orders have got the force of law and deemed provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the Management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition

contained in section 2(00) of the Industrial Disputes Act, 1947 means termination by the employer of the service of a workman is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case, the terminology of the clause No. 15 of the Standing Order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order :
Discontinuation of service :

If a workman remained absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is pending the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman, which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated the 22nd November, 1981.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the *Haryana Government Gazette*.

J. D. MEHTA,

Sole Arbitrator.

No. 9(1)-81/6-Lab./13774. -In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J. D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Mehtab Singh, s/o Shri Jage Ram workman and the management of M/s. Hindustan Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J. D. MEHTA, RETIRED DEPUTY LABOUR COMMISSIONER (HARYANA).
SOLE ARBITRATOR, RESIDENT OF D/E-137, TAGORE GARDEN, NEW DELHI

SHRI MEHTAB SINGH S/Y SHRI JAGE RAM (WORKMAN)

versus

M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, SONEPAT (HARYANA)

Present :

1. Shri Mehtab Singh.
2. Shri U.C. Pant.

ARBITRATION AWARD

The parties cited above appointed me as Sole Arbitrator in terms of Arbitration agreement dated 1st May 1981 under Section 10-A of the Industrial Disputes Act, 1947. The arbitration agreement was published in the *Haryana Government Gazette (Extraordinary)*,—vide No. ID/ETK/67/81/26826, dated the 27th May, 1981.

The following point in dispute was referred to me for arbitration:—

Whether the action taken by the management was justified and if not, to what relief the workman is entitled to.

On receipt of the notification, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the issues were framed with the consent of the parties as under :—

- (1) Whether workman remained unauthorised absent exceeding 10 (ten) days from duty.

- (2) Whether the action of the management tantamount to retrenchment ; if so, to what relief he is entitled to.

The case was fixed for the evidence of the workman and was recorded. Thereafter, it was fixed for the evidence of the management. But a copy of the settlement dated the 23rd September, 1981 under section 18(1) of the Industrial Disputes Act, 1947 was received.

According to the terms of the settlement, the management agreed to pay Rs. 1,671.73 (One thousand six hundred seventy one and paise seventy-three only) in full and final settlement of all his claims including his right of reinstatement and re-employment.

In order to verify the correctness of the settlement, a notice was issued to the workman for appearance on the 30th October, 1981. The workman did not turn-up. Evidently, the workman after settling the account with the Management had left and was disinterested. This has been confirmed by one of his co-workers Shri Dewan Singh, who was present on the 30th October, 1981.

In view of the mutual settlement dated 23rd September, 1981 under section 18(1) of the Industrial Disputes Act, 1947, copies of which have been sent to all the requisite Authorities and the position explained above, I hold that there is no dispute left between the parties for arbitration by me.

Thus the workman evidently accepted the sum of Rs. 1671.73 paise (Rupees one thousands six hundred seventy-one and paise seventy-three only) in full and final settlement of all his claims including the right of reinstatement and re-employment.

Dated the 12th November, 1981.

J. D. MEHTA,

Sole Arbitrator.

Forwarded (Four copies) to the secretary to Haryana Government, Labour and Employment Department, Chandigarh, as required under section 17 of the Industrial Dispute Act, 1947.

J. D. MEHTA

Sole Arbitrator.

No. 9(1)-81/6Lab./14931.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired), Sole Arbitrator in respect of the dispute between Shri Balkishan, son of Shri Ram Dhan, workman and the management of M/s. Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E-137, TAGORE GARGEN, NEW DELHI

SHRI BALKISHAN, SON OF SHRI RAM DHAN (WORKMAN)

versus

THE MANAGEMENT OF M/S. HINDUSTAN EVEREST TOOLS LTD., JATHERI, DISTRICT SONEPAT (HARYANA)

Appearance :—

1. Shri Bal Kishan alongwith Shri Chander Singh.
2. Shri U.C. Pant along with Shri D.N. Gupta.

ARBITRATION AWARD

The above named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement dated 1st May, 1981 under section 10-A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (Extraordinary),—vide No. ID/RTK/67/81/26875, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to ?

On receipt of the notification, notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents (copies) in support of their contentions in this case, while the representative of the workmen filed collective documents on behalf of the union not being written by any individual worker. The following issues were framed on the basis of their pleadings with their consent :—

- (1) Whether the workman was unauthorisedly absent exceeding 10 days from duty ?
- (2) Whether the action taken by the management tantamounted to retrenchment ? If so, to what relief he is entitled to ?

Then the parties led their evidences. The workman examined himself as his own witness. Shri Bhatia, a deputy clerk, resorted to dharna during the period from 20th March, 1981 to 3rd April, 1981 at Nehru Place (M.C. of C. Company) in sympathy with the two hunger strikers and to support the demands raised. In support of his contention he identified the photograph Exb. W-1 taken at Nehru Place. He has also stated that he did not have any knowledge of the striking orders nor even the same displayed on the notice board of the Company. He filed the return of his duty on 4th April, 1981 after the hunger strike dharna was lifted on 3rd April, 1981 but was stopped by the Chowkidar. He added that he did not give any notice to the management for being stopped wrongfully in the place as the matter was with the labour department and that he was not a member of the union. He said that he is a member of the union and has not been put in any company with the management. In his cross examination, he admitted that he did not apply for leave though he admitted that a worker can remain absent unauthorisedly and also identified his signature on the warning letter dated 26th October, 1978 Exb. M-1 wherein the mention of the standing order has been made in Hindi, which is not official to him. He admitted that his postal address is correct but denied the receipt of letter dated 26th March, 1981 and 30th March, 1981 sent under P.O. (recall notices). Similarly he denied the receipt of Registered A.D. letter dated 2nd April, 1981 and read the endorsement in Hindi made by the Postal authorities on the returned envelope :—
ने से निवार प्राप्त

He could not name the Chowkidar who stopped him on 4th April, 1981 and admitted that he did not write to the management about his wrongful stoppage by the Chowkidar on the 4th April, 1981. He told that there was about 28-29 workers when he went for duty on 4th April, 1981 and executed an arbitration agreement in his individual capacity. He admitted his signatures in token of having received the leave-books Exb. M-2.

While the management examined S. Shri U. C. Pant (Deputy Manager and Personnel) Shri R. K. Dixit (Personnel Officer), Shri Hira Singh, Head Watchman and M/s. Rajpal and Niranjan Singh Watchman as witness whose recorded statements are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no display of the striking orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no provisions in the standing orders which had any such provisions. In this case he relied on the Rulings in cases of :—

- (1) G. T.—Lad—versus—Chemical and Fibres India Ltd., '79—LIC P. No. 290.
- (2) Buckinghan Co.—versus—Venkatiah 1963—LLJ P. No. 638.

He also questioned the bonafide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. State Bank of India versus—Sahabuddin and Hindustan Steel Ltd versus—Presiding Officer, Labour Court etc. He accordingly pleaded that the management while not observing the conditions precedent to retrenchment committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was

on dharna excepting his lone statement. The number of workmen on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers i. e. 31 or so were constantly on dharna. He refuted the allegation of the learned counsel from the opposite side that the management adopted negative/sterm attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position,—*vide* their letters dated Exhibit W-7 and W-8 and their stand has been vindicated by the labour department, Haryana, by rejecting the demand notice *vide* endorsement No. 38707 dated the 21st August, 1981. It is obvious that there was no justification for the workmen to create any stir on this account. He also pointed out to the fallacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S Shri Hira Singh, Head Watchman and Rajinder Narain Singh Watchman. He also pointed out that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal Singh, Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management as hunger strike dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that the factum of recall notices issued by the management have been admitted by the Union.—*vide* letters Exhibit W.5.

As regards issue No. 2, he argued that 'retrenchment' would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running process as held by the Bench of five Judges of the Supreme Court in a case "Baird Light Railway Co. Ltd. *versus* K. N. Vasudevan" in 1963, and still holds good being the judgment of a larger bench. He further viewed that judgment in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

(1) DCM *versus* Shambunath Mukherjee.

(2) State Bank of India *versus* Subramanian and others.

He pointed out that a Division Bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta *versus* Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment- 1980 11J 336(Bombay). He accordingly pleaded that the "surplus age" for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as arguments advanced in support of their contention. My findings issue-wise are as under:-

(1) From the facts and evidence it is clear that there was unrest amongst some workers due to demand raised by their union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements dated the 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected, *vide* its letter No. 38707, dated the 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under OPC and admitted by him in an indirect manner by the union,—*vide* their letter dated the 17th March, 1981 Exhibit W. 5. More so the management did send Registered A.D letter which was returned by the postal authorities with remarks "लेने से इनकार वापस". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981. The factum of having reported on 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 20th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of recall notices issued to him by the management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further I am inclined to accept the argument of the management counsel that the standing orders have the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the Management.

with the facts in this case. The retrenchment as given in the definition contained in section 2(oo) of the Industrial Disputes Act, 1947, means termination by the employer of the service of a workman which is as a result of positive action of employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing order
Discontinuation of Service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose lien on his appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management.

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen)* wages for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues being undischarged with the management.

Dated the 20th November, 1981

J. D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh Labour and Employment Department, under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J.D. MEHTA,
Sole Arbitrator.

No. 9(1)-81 6-1 ab 14932. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana, (retired) Sole Arbitrator in respect of the dispute between Shri Shree Om, son of Shri Badle Ram, workman and the management of M/s Hindustan Everest Tools Ltd., Jathari, Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DEPUTY LABOUR COMMISSIONER
HARYANA RESIDENT OF D E-137 TAGORE GARDEN NEW DELHI-110027

SHRI SHREE OM, SON OF SHRI BADLE RAM (WORKMAN)

VERSUS

THE MANAGEMENT OF M/S HINDUSTAN EVEREST TOOLS LTD JATHARI SONEPAT

Appearances:-

1. Shri Shreeom alongwith Shri Chander Singh.
2. Shri U.C. Pant alongwith Shri D.N. Gupta.

ARBITRATION AWARD

The above-named parties appointed me as a Sole Arbitrator in terms of the arbitration agreement, dated 29th April 1981, under section 10A(3) of the Industrial Disputes Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (extra ordinary) — vide No. ID RTK-67 81 26707, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :

- (1) Whether the action taken by the management was justified and if not, to what relief, the workman is entitled to ?

On receipt of the notification, usual notices were issued to the parties. The parties made their appearances, filed their statement of claims, the written statement as well as rejoinder. The management filed documents in

support of their contentions in this case, whereas the documents were collectively filed by the union without being written by any individual workman. The pleadings of the parties gave rise to the following issues which were framed with their consent.

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days (ten) from duty.
- (2) Whether the action taken by the managements tantamounts to retrenchment. If so, to what relief he is entitled to ?

The parties produced their evidences. The workman examined himself as witness. Shri Shreem stated that he was on hunger strike dharna from 9th March to 3rd April, 1981 at Nehru Place (H.O. of the Company) to press the demand sponsored by the union. This was within the knowledge of the management as Shri Pant used to visit the Head Office. He further stated that he did not receive any letter of the management during this period nor was informed by his people in the village and added that the P.A. of Shri M.K. Jain, Jt. Labour Commissioner, Haryana was sent to get the hunger strike dharna lifted on 3rd April, 1981. He was present at Haryana Bhawan as well as Nehru Place when the P.A. came there. The P.A. brought a letter which was signed by Shri G. Madhavan, Labour Commissioner, as well as Mr. M.K. Jain. The P.A. did not visit the management's office and offered a glass of juice to the hunger strikers on 3rd April, 1981. He added that he reported for duty on 4th April, 1981 but was sterned at the gate by the Head Office. He gave information that his name was on strike list.

In his cross examination, he admitted his presence was correct but was absent from village from 9th March to 3rd April, 1981. He admitted that he did not receive any individual letter about his being on Dharna to the management and denied to have received any letter from the management on return from Dharna. He however, identified the words "Hunger Strike" written by Shri P. Ram on the post card dated 3rd April, 1981. He however, said that he was not present at work on 5th April, 1981 but was at Nehru Place on that day. He admitted that he did not make any request to the management in writing for taking him back on duty after the dharna was lifted. He denied the knowledge of the leave procedure and about the name of the Clerk in-charge who refused his entry on 4th April, 1981. He however, admitted that leave has to get sanctioned before proceeding but he did not hold any request for leave from the management individually. Nor he wrote to the management for his duty.

While the management examined S Shri U.C. Pant, Deputy Manager Personnel and Shri R.K. Didi (Personnel Officer) Shri Hira Singh, Head Watchman and Shri Rajpal and Niranjan Singh, Watchmen, as witnesses whose recorded statements are on file and the management closed the case.

The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no disobedience or defiance of the standing orders which would compel the management to invoke clause 15 of the Standing Orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further submitted that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of:-

(1) G.T. Ltd.—*Versus*—Chemical and Fibres India Ltd., 79-LIC P. No. 290.

(2) Buckingham and Co. —*Versus*—Venkatesh, 63-LLJ P. No. 638.

He also questioned the bonafide of the management in acting in harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz., *State Bank of India—Versus—Subramaniam*—and *Hindustan Steel Ltd., Versus—Presiding Officer, Labour Court* etc. He accordingly pleaded that the management will not observing the conditions precedent to retrenchment committed illegality, thus the workman is entitled to reinstatement with full back wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It was also been admitted that no written request was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on dharna except his bare statement. The number of workmen on dharna, period of dharna etc. have different versions and thus cannot be accepted that a group of workers file 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 5th January, 1981. He explained that the management discussed with the workers and explained to them the law as well as the justified position, *vide* their letters dated Exhibit W-7 and W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice,—*vide* endorsement No. 34707, dated 21st August, 1981. It is obvious that there was no justification for the workers union to

create any stir on this account. He also pointed out to the fallacious statement that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman, and Rajpal and Niranjan Singh, Watchmen. He also pointed out that there is no truth in the statement S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal, watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that the factum of recall notices issued by the management have been admitted by the Union, - *vide*: letters Exhibit W-5.

As regards Issue No. 2, the argued that 'retrenchment would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd.-Versus K.N. Jogalakar--in 1953--and still holds good being the judgement of a larger bench. He further viewed that the judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

- (1) D.C.M.—*Versus*—Shambunath Mukherjee.
- (2) State Bank of India—*Versus*—Subramaniam etc.

He pointed out that a Division Bench of Bombay High Court have held in one of Kamlesh Kumar Rajnikant Mehta—*Versus*—Central Government Industrial Tribunal No. 1 that the termination of services of workmen for loss of confidence is not a retrenchment—1980 LLJ 336 (Bombay). He accordingly pleaded that the "supplusage" for retrenchment is implicit in the scheme of Industrial Dispute Act and every case cannot be rope in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to the evidence adduced by the parties as well as the arguments advanced in support of their contention. My findings issue-wise are as under:—

- (1) From the facts and evidence it is clear that there was unrest amongst some workers due to demands raised by the Union. It is also proved that the demands raised by the union were not considered fit for any action in view of the subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected, - *vide* his letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his factum of Dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union, - *vide*: their letter dated 17th March, 1981, Exhibit W-5. More so the management did send Registered A/D letter which was returned by the postal authorities with remarks "लेने से इनकार वापस". The workman has also admitted that he did not write to the management about his resumption of his duties, after refusal by the management on 4th April, 1981, he factum of having reported on 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 9th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the breach of contract with his own action which followed with an intimation to him by the management under clause 15 of the standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no dis-obedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the Management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the argument of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the Certified Standing Order is justified and in order as the workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 is decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (OO) of the Industrial Dispute Act, 1947 means termination by the employer of the service of a workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause No. 15 of the standing order which is reproduced below is quite material and different from that of the DCM.

Clause No. 15 of the Certified Standing Order

Discontinuation of Service

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12 (b) he shall lose lien on his appointment and it shall be

deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the management."

Thus I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 day wages (fifteen) for every completed year of service to the workman which would be equivalent to the compensation payable under section 25(F)(b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

Dated the 20th April, 1981.

J.D. MEHTA,
Sole Arbitrator.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour and Employment Department, under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J.D. MEHTA,
Sole Arbitrator.

No. 9(1)-81/6-Lab / 14933. —In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following Arbitration Award of Shri J.D. Mehta, Deputy Labour Commissioner, Haryana (retired) Sole Arbitrator in respect of the dispute between Shri Narain Singh, son of Shri Chhalu Ram, workman and the management of M/s Hindustan Everest Tools Ltd., Jatheri, Sonapat.

BEFORE SHRI J.D. MEHTA, SOLE ARBITRATOR, RETIRED DY. LABOUR COMMISSIONER, HARYANA, RESIDENT OF D/E 137, TAGORE GARDEN, NEW DELHI. 110027

SHRI NARAIN SINGH, SON OF SHRI CHHALU RAM —Workman

Versus

THE MANAGEMENT OF M/S HINDUSTAN EVEREST TOOLS LTD., JATHERI, SONEPAT

Appearances. —

1. Shri Narain Singh alongwith Shri Chander Singh.
2. Shri U.C. Pant alongwith Shri D.N. Gupta.

ARBITRATION AWARD

The above named parties appoint me as a sole arbitrator in terms of the arbitration agreement dated 1st May, 1981 under section 10A(3) of the Industrial Dispute Act, 1947. The said arbitration agreement was published in the Haryana Government Gazette (extra ordinary)—vide No. ID/RTK/67/81/26840, dated 27th May, 1981.

The following point in dispute was referred to me for arbitration :—

- (1) Whether the action taken by the management was justified and if not, to what relief the workman is entitled to.

On receipt of the notification, notices were issued to the parties. The parties made their appearances, filed their statement of claims, written statement as well as rejoinder. The management filed copies of documents in support of their contentions in this case, whereas the documents were collectively filed by the Union without being written by any individual workman. The pleadings of the parties gave rise to the following issues which were framed with their consent :—

- (1) Whether the workman remained unauthorisedly absent exceeding 10 days (ten) from duty ;
- (2) Whether the action taken by the management tantamounts to retrenchment. If so, to what relief he is entitled to.

The parties produced their evidences. The workman examined himself as witness. Shri Narain Singh deposed that he was on dharna/strike in Nehru Place (H.O. of the Company) in support of the demands raised by the Union and did not know the rules and regulations of the Company. He further stated that he did not receive any letter of the management during this period and the dharna was lifted on 3rd April, 1981 when the P.A. of Jt. Labour Commissioner came at the instance of Labour Minister, Haryana. He was on dharna from 17th March till 3rd April, 1981. He added that the arbitration agreement was executed in the presence of Mr. M.K. Jain, Jt. Labour Commissioner, who was camping at Faridabad. He identified the photograph of S/ Shri Janardhan Ojha and Shri Jagbeer Singh, the hunger strikers, Ext. W-1 Nehru Place. In the cross examination

he admitted the receipt of warning notice and added that he had never been absent without authorised leave before. He admitted that no worker can be absent from duty without the permission of the management and added that he made application to the management for the period he remained absent but admitted that he did not have documentary evidence to this effect. He admitted that there were some workers who used to come and go and added that he was not on hunger strike but on dharna. He admitted his postal address as correct, but denied to have received any letter of the management though he remained in his village after 4th April, 1981. He told that he could not recall whether he was in his village from 16th to 18th April, 1981, when the postman came to deliver the letter. He admitted that no mention of dharna was made in the arbitration agreement which was signed by him. He also came to know from his leaders that instructions were given by the Labour Minister, Haryana, to get the dharna/hunger strike ended.

While the management examined S/Shri U.C. Bant, Dy. Manager (Personnel) Shri R.K. Dixit (Personnel Officer) Shri Hira Singh, Head Watchman, M/s. Rajpal and Nirnanjan Singh Watchmen, as witnesses, whose recorded statement are on file and the management closed the case. The parties advanced their arguments as under and gave the same in writing.

The learned representative of the workmen assailed the action of the management on the ground that there was no dis-obedience or defiance of the standing orders which could compel the management to invoke clause 15 of the standing orders. He viewed that the workman was on peaceful agitation following the Gandhian principles for acceptance of their justified demand and the dharna was within the knowledge of the management. Thus it could not be considered as absent from duty and striking off his name was uncalled for. He further elucidated that there are no such circumstances that he had left the services or had any such intentions. In this case he relied on the Rulings in cases of :-

(1) G.T. Ltd *Versus* Chemical & Fibres India Ltd., 79- LIC P. No. 290.

(2) Buckingham Company *-Versus-* Venkatiah—1963- LLJ P. No. 638.

He also questioned the bonafide of the management in acting the harsh and hard manner to crush the peaceful and constitutional activities of the union and also challenged the action of the management that the termination tantamounted to retrenchment in the light of the recent pronouncements of the Supreme Court viz. State Bank of India—*Versus* Subramaniam and M/s. Hindustan Steel Ltd., *Versus* Presiding Officer, Labour Court etc. He accordingly pleaded that the management while not observing the conditions precedent to the retrenchment committed illegality, thus the workman is entitled to reinstatement with full back-wages.

While the learned counsel of the management pointed out that the workman accepted the factum of the absence exceeding 10 days without permission from the management and without giving individual intimation. It has also been admitted that no written requests was made explaining the reasons for his unauthorised absence or requesting for being taken on duty. He contended that there has been no corroboration that the workman was on dharna excepting his lone statement. The number of workmen on dharna, period of dharna etc. have different versions and thus can not be accepted that a group of workers i.e. 31 or so were constantly on dharna. He refuted the allegations of the learned counsel from the opposite side that the management adopted negative/stern attitude about the demand notice dated 6th January, 1981. He explained that the management discussed with the workers and explained to them the legal as well as the justified position, —*vide* their letters dated Exb. W-7 and Exb. W-8 and their stand has been vindicated by the Labour Department, Haryana, by rejecting the demand notice, —*vide* endorsement No. 38707 dated 21st August, 1981. It is obvious that there was no justification for the workers/union to create any stir on this account. He also pointed out to the fallacious statements that all absentees went to the factory on 4th April, 1981 to report for duty which has been forcefully rebutted in the witnesses of S/Shri Hira Singh, Head Watchman and Rajpal and Nirnanjan Singh Watchmen. He also pointed that there is no truth in the statement of S/Shri Jagbeer Singh and Janardhan Ojha that they reported for duty on 19th April, 1981 which was a weekly closed day of the factory being Sunday as given out in the statement by Shri Rajpal Watchman, who was on duty on that day. He pleaded that the standing orders have legal force and did not get suspended during any agitation. Nor every absentee can be presumed by the management on hunger strike/dharna which was resorted to by a negligible minority of the 31 workers out of 750 workers employed and added that factum of recall notices issued by the management have been admitted by the union, —*vide* letter Exb. W-5.

As regards issue No. 2, he argued that "retrenchment" would constitute termination of service by the employer, but there was no such act of termination by the management in this case. He viewed that there is no retrenchment unless there is a discharge of surplus labour in a continuation or running industry as held by the Bench of Five Judges of the Supreme Court in a case "Barsi Light Railway Co. Ltd.,—*versus* K. N. Jogalekar—in 1973 and still holds good being the judgement of a larger bench. He further viewed that judgement in the following cases as pointed out by the opposite counsel are distinguishable because the facts are materially different in the present case.

(1) D.C.M.—*Versus* Shambunath Mukherjee.

(2) State Bank of India—*Versus*—Subramaniam and others,

He pointed out that a division bench of Bombay High Court have held in case of Kamlesh Kumar Rajnikant Mehta—*Versus*—Central Government Industrial Tribunal No.1 that the termination of services of workman for loss of confidence is not retrenchment—1980 LLJ 336 (Bom.). He accordingly pleaded that the 'surplusage' for retrenchment is implicit in the scheme of Industrial Disputes Act and every case cannot be roped in for the purpose of retrenchment. He added that there is no such positive action by the employer as to term it retrenchment in the present case.

I have applied my mind to evidence adduced by the parties as well as arguments advanced in support of their contentions. My findings issue-wise are as under : -

(1) From the facts and evidence it is clear that there was un-rest amongst some workers due to demands raised by their union. It is also proved that the demand raised by the union were not considered fit for any action in view of subsisting settlements dated 7th February, 1977 and 12th October, 1978 as pointed out by the Labour Department and thus rejected, - *vide* its letter No. 38707, dated 21st August, 1981.

The workman has also not proved that he wrote to the management about his fatum of dharna nor he made any application for leave of his absence. Besides it is on record that the management sent him letters (recall notices) under UPC and admitted in an indirect manner by the Union, *vide* their letter dated 17th March, 1981 Exb. W-5 More so the management did send Registered A/D letter which was returned by the Postal Authorities with remarks "प्राप्तकर्ता बार बार जाये पर नहीं मिलता". The workman has also admitted that he did not write to the management about his resumption of duties, after refusal by the management on 4th April, 1981. The factum of having reported on 4th April, 1981 has also not been proved. This all goes to establish that the workman remained absent unauthorisedly from 17th March, 1981 to 3rd April, 1981 which exceeds 10 days and invited the reach of contract with his own action which followed with an intimation to him by the management, under clauses 15 of the Standing order.

The contention of the workmen's counsel that action under clause 15 of the standing order was void as there was no disobedience or defiance on the part of the workman has been found untenable as evident from the documentary facts and the affirmation of "recall notices" issued to him by the management and deliberately ignored by him. Nor the plea of malafide or victimisation is forceful because the workman has himself to be blamed for the disregard of the standing order and no malice can be attributed as he did not come up with any explanation for absence nor did he care to write to the management for resumption of duties. Further, I am inclined to accept the arguments of the management counsel that the standing orders have got the force of law and deeming provision take form of law and it does not get suspended during any agitation. Thus the action under clause 15 of the certified Standing Order is justified and in order as workman remained absent exceeding 10 days from duty unauthorisedly. Issue No. 1 decided in favour of the management.

As regards issue No. 2, the Rulings stated by the learned representative of the workman have been studied and found that the same have no bearing with the facts in this case. The retrenchment as given in the definition contained in section 2 (oo) of the Industrial Disputes Act, 1947 means termination by the employer of the service of the workman which is as a result of positive action of the employer and cannot take in its fold the termination as a result of the act of employee. In this case the terminology of the clause 15 of the standing order which is reproduced below is quite material and different from that of the D.C.M.

Clause No. 15 of the Certified Standing Order.
Discontinuation of Service.

If a workman remains absent for a continuous period of ten days without taking permission of the management or giving intimation under standing orders 12 and 12(b) he shall lose lien on his on appointment and it shall be deemed that he has left the services from the date of his absence unless he explain his absence satisfactorily to the Management.

This I am of the view that it does not tantamount to retrenchment and would be stretching too far if such case is roped in the coverage of retrenchment. However, considering the circumstances, length of service as well as plea of social justice, it would be in the interest of equity and justice to award relief to the workman. I award 15 days (fifteen) wages for every completed year of service to the workman which would be equivalent to the compensation payable under Section 25(F) (b) of the Industrial Disputes Act, 1947, besides his other dues lying undisbursed with the management.

J.D. MEHTA,
Sole Arbitrator.

Dated the 21st November, 1981.

Forwarded (four copies) to the Secretary, Haryana Government, Chandigarh, Labour & Employment Department under section 17 of the Industrial Disputes Act, 1947, for favour of necessary publication in the Haryana Government Gazette.

J. D. MEHTA,
Sole Arbitrator.